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BEFORE THE
Federal Communications Commission

WASHINGTON, D.C.

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Federal Communications Commission
Office of Secretary

In the Matter of

Mobile Satellite-Based
Communications Services by
Crescomm Transmission Services, Inc. and
Qualcomm Incorporated

RM-7912

To: The Chief, International Bureau and
The Chief, Office of Engineering and Technology

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**REPLY TO COMSAT CORPORATION'S
PETITION FOR RECONSIDERATION AND CLARIFICATION**

Robert G. Allen
J. Geoffrey Bentley

ALLEN & HAROLD, P.L.C.

June 24, 1996

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Maritime Telecommunications Network, Inc. ("MTN"), through counsel and pursuant to Section 1.429(f) of the Rules, hereby submits these comments concerning and in partial opposition to the Petition in this proceeding by Comsat Corporation and Comsat International Corporation (hereinafter referred to jointly as "Comsat") for Reconsideration and Clarification of the FCC's Order, DA 96-950, released April 29, 1996 (the "Waiver Order").¹ In the Waiver Order, the FCC dismissed, as moot, a petition for rulemaking by

¹ Notwithstanding that the Waiver Order dealt with a request for rulemaking, MTN is advised by the FCC staff that public notice of the Waiver Order will not be published in the Federal Register as provided in Section 1.429(e) of the Rules. Accordingly, MTN has calculated the date for filing this Reply to Comsat Corporation's Petition For Reconsideration and Clarification from the date of the FCC's public notice of the Petition for Reconsideration and Clarification, June 7, 1996. FCC Daily Digest of June 7, 1996, page 916.

MTN's predecessor-in-interest, Crescomm Transmission Services, Inc. ("Crescomm"), to permit satellite-based communications between ships and fixed or temporary-fixed satellite earth stations in the 4/6 GHz and 12/14 GHz bands, in light of a waiver granted therein permitting MTN and Qualcomm Incorporated ("Qualcomm") to file applications to make permanent existing operations in those bands under experimental and special temporary authority. Absent a waiver, or rulemaking as requested by Crescomm, the Table of Frequency Allocations (Section 2.106 of the Rules) permits only Fixed Satellite Service or non-satellite mobile (excluding aeronautical) services in those bands.

These Comments and Partial Opposition address two requests in Comsat's Petition for Reconsideration and Clarification: (1) extension of the waiver granted MTN and Qualcomm to "any similarly situated provider of C- and Ku-band wideband maritime services...willing to comply with all appropriate conditions;" and (2) clarification that compliance with noninterference requirements may be demonstrated "through means appropriate to the unique characteristics of maritime mobile stations." *Reconsideration and Clarification Petition*, p. 6.

The suggestion of a "blanket waiver" is contrary to all principles of sound agency decision-making. If the FCC were to determine, before the filing of any application, that a "waiver" would be granted to every applicant, the "rule" would be consumed by the exceptions and totally eviscerated; the "waiver" would become the "rule". Were an

administrative agency to proceed in this manner, the "notice and comment" requirements of the Administrative Procedure Act would become meaningless.

The waiver granted MTN and Qualcomm was fully justified by the companies' extended record pursuant to experimental and temporary authority. Nothing in the Waiver Order prohibits Comsat or any other entity from seeking a similar waiver of the rules. But the FCC should not compromise its responsibility to give close attention to individualized waiver requests, to determine whether, in fact, the public interest would be better served by waiver than by application of the appropriate rule. WAIT Radio v. FCC, 418 F2d 1153, 16 RR2d 2107, 2112 (D.C. Cir. 1969) Cert. Denied 109 U.S. 1027 ("An applicant for waiver faces a high hurdle even at the starting gate."), See, also, United States v. Storer Broadcasting 351 U.S. 192 (1956) (burden on waiver applicant to show sufficient reasons for change or waiver of general rule).

For these reasons, this aspect of Comsat's petition should be denied.

Separately, Comsat has proposed one means for analyzing the potential for harmful interference between mobile shipboard transmitters and fixed stations in U.S. coastal areas and demonstrating compliance with the noninterference conditions of the Waiver Order. In response to Crescomm's petition for rulemaking, Bell Atlantic argued that Crescomm

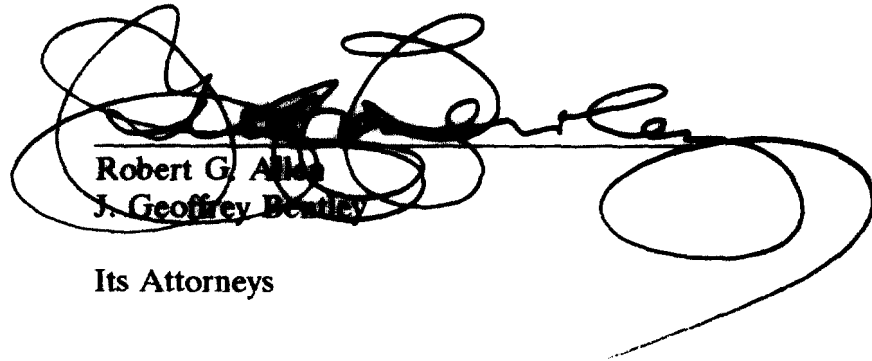
had not provided any details for frequency coordination with existing users to demonstrate the absence of harmful interference and urged the FCC to deny the petition or delay action until evidence of noninterference was provided. In the Waiver Order, the FCC responded to Bell Atlantic's concern by requiring maritime satellite service applicants to "cooperate in establishing interference assessment and prevention requirements." In so providing, the FCC implicitly acknowledged the point made in Comsat's petition, techniques are available, other than typical fixed station coordinating procedures, which will (a) identify fixed stations potentially subject to interference, (b) permit implementation of control arrangements to protect affected fixed stations, and (c) not unduly burden maritime applicants. See Reconsideration and Clarification Petition, pp. 11-12.

In general, this aspect of Comsat's petition is well-founded and the flexible approach to interference analysis and protection adopted in the Waiver Order should be affirmed by the FCC. MTN does, however, take issue with one specific comment in Comsat's Petition. Comsat asserts (*Petition*, p. 10) that "sidelobe to sidelobe" interference "would be temporary, but likely would be of sufficient duration that it could not be classified as short-term and should be avoided." While this proposition might be generally applicable to continuous transmissions, i.e. where interference from mobile-to-satellite transmissions to

fixed stations would be transitory but continuous, it overstates the potential for interference from the intermittent transmissions of short duration that are typical of the service provided by MTN.

Respectfully submitted,

MARITIME TELECOMMUNICATIONS NETWORK, INC.



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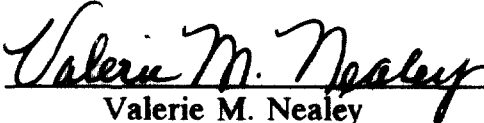
CERTIFICATE OF SERVICE

I, Valerie M. Nealey, a secretary in the law firm of Allen & Harold, P.L.C., hereby certify that I have this 24th day of June, 1996, caused to be delivered via First Class Mail, postage prepaid copies of the foregoing "Reply To Comsat Corporation's Petition For Reconsideration and Clarification" to the following:

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